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SUBJECT: NIGERIA: MUSLIMS PERSPECTIVES ON SHARIA

1. CONFIDENTIAL - ENTIRE TEXT.

2. SUMMARY: DURING POLOFF'S TRIP TO THE NORTH APRIL 3-14, MUSLIM SPOKESMEN PROTESTED THAT WESTERN PORTRAYALS GIVE A DISTORTED PICTURE OF THE SHARIA COURT SYSTEM. CONTRARY TO ITS BRUTAL IMAGE IN THE WEST, THEY ASSERT, SHARIA PROVIDES A HUMANE AND EFFECTIVE DETERRENT TO WRONGDOING THAT IS COMPATIBLE BOTH WITH MUSLIM ETHICS AND THE HISTORICAL EXPERIENCE OF ISLAM. MOREOVER, CHARGES THAT IT IS A VESTIGE OF "BACKWARDNESS" THAT WILL BECOME EXTINCT BEFORE THE ADVANCE OF "MODERNITY" HAVE NOT, THEY STATE, BEEN BORNE OUT IN ACTUALITY. THE EXAMPLES OF SHARIA CASES PROVIDED, WHILE INSUFFICIENT EITHER TO VALIDATE OR REFUTE THEIR CONTENTIONS, SHOW HOW DEEPLY ENMESHED SHARIA IS IN MUSLIM SOCIETY IN THE NORTH AND HOW INTRACTIBLE IT IS LIKELY TO BE AS A POLITICAL ISSUE.

3. IN COMPILING THIS REPORT, POLOFF SPOKE WITH THE FOLLOWING PERSONS: JUSTICE MU'AZU ALIYU, GRAND KHADI OF KADUNA; SHEIK ABUBAKAR MAHMOUD GUMI, LEADER OF THE IZALA SECT OF ISLAM; PROFESSOR AUWULU HAMISU YADUDU, HEAD OF THE LAW FACULTY, BAYERO UNIVERSITY IN KANO; AND PROFESSOR MUHAMMED SANI ZAHRADEEN, HEAD OF THE ISLAMIC ARTS AND STUDIES DEPARTMENT, BAYERO UNIVERSITY IN KANO. END SUMMARY.

HISTORICAL GENESIS OF SHARIA

4. ACCORDING TO ZAHRADEEN, THE SHARIA COURTS ARE A PRODUCT OF AN HISTORICAL EVOLUTION THAT IS DIFFERENT FROM, BUT NO LESS VALID THAN, THAT WHICH OCCURRED IN THE WEST. THE SEPARATION OF CHURCH AND STATE--WHICH, HE ASSERTS, IS THE INTELLECTUAL PREMISE UPON WHICH OPPOSITION TO SHARIA IS BASED--IS, HE DECLARED, A CONCEPT WHICH ARISES FROM, AND IS SPECIFIC TO, THE HISTORICAL EXPERIENCE OF WESTERN EUROPE. THOUGH NOW DEEPLY ENGRAINED IN THE POLITICAL CULTURE OF THE WEST AND OF WESTERNIZED NIGERIANS, IT ONLY BECAME THE NORM, HE SAID, AS A RESULT OF CENTURIES-LONG STRUGGLES BETWEEN POPES AND KINGS OF CHRISTENDOM WHICH HAVE LITTLE RELEVANCE TO OTHER PEOPLES.

5. INDEED, ZAHRADEEN DECLARED, NEITHER THE ISLAMIC NOR ANY OTHER NON-EUROPEAN CIVILIZATION EVOLVED SUCH A CONCEPT, AND MUSLIM BELIEF SIMPLY DOES NOT INCLUDE THE NOTION OF "RENDERING UNTO CAESAR THE THINGS THAT ARE CAESAR'S AND TO GOD THE THINGS THAT ARE GOD'S." IN FACT, HE ASSERTED, ISLAM EXPLICITLY DEFINES MAN'S POSITION NOT ONLY IN RELATION TO HIS FELLOW MAN AND TO HIS GOD, BUT TO HIS GOVERNMENT AS WELL. MUHAMMED, HE POINTED OUT, WAS THE ONLY MAJOR RELIGIOUS FIGURE TO GOVERN A TEMPORAL STATE, AND FROM THIS EVOLVED STRONG NOTIONS OF THE INTERRELATIONSHIP BETWEEN RELIGIOUS ETHICS AND GOVERNMENT. TO IMPOSE CONCEPTS SUCH AS CHURCH-STATE SEPARATION ON THE FOLLOWERS OF ISLAM IS, HE OPINED, THE HEIGHT OF WESTERN ETHNOCENTRISM--AN ATTEMPT, AS HE PUT IT, TO SUBJUGATE ONE LEGITIMATE SYSTEM OF VALUES TO THE BELIEFS OF ANOTHER.

SHARIA AND "MODERNITY"

6. ECHOING THE ETHNOCENTRISM THEME, YADUDU IN A SEPARATE CONVERSATION, STATED THAT WESTERNERS HAVE

DEVELOPED A NOTION OF AN ALL-ENCOMPASSING "MODERNITY"--TO WHICH THEY ASSUME ALL HUMANS INVARIABLY ASPIRE--THAT TRANSCENDS CULTURE. THE COROLLARY TO THAT ASSUMPTION, HE SAID, IS THAT ANYTHING THAT IS NOT "MODERN" IS "BACKWARD," AND THUS DOOMED TO EXTINCTION BY THE "MARCH OF PROGRESS." ALL THESE CONCEPTS, IN YADUDU'S OPINION, ARE IN FACT CULTURE-BOUND, AND IN RECENT TIMES HAVE BEEN UNDERGOING REEVALUATION BY NON-WESTERN PEOPLES. WHERE THE WEST WAS ONCE CONSIDERED TO BE THE MODEL FOR SOCIAL AND ECONOMIC DEVELOPMENT, ITS EXPERIENCES HAVE, IN HIS OPINION, NOT PROVED TO BE UNIVERSALLY APPLICABLE AND NON-WESTERN SOCIETIES ARE NOW LOOKING FOR WAYS TO DEVELOP THAT ARE IN KEEPING WITH THEIR OWN CULTURAL AND ETHICAL PRECEPTS.

17. TO ILLUSTRATE HIS POINT, YADUDU PROVIDED POLOFF WITH THE SYNOPSIS OF HIS DOCTORAL DISSERTATION. (FYI: YADUDU RECEIVED HIS PH.D. IN ISLAMIC LAW FROM HARVARD IN 1985. END FYI.) IN IT, HE TAKES ISSUE WITH WESTERN SCHOLARS WHO ASSERT THAT SHARIA WILL FADE FROM THE SCENE AS ISLAMIC SOCIETIES ARE DRAWN INCREASINGLY INTO THE MATRIX OF INTERNATIONAL LEGAL SYSTEMS. ON THE CONTRARY, YADUDU POSITS THAT SHARIA HAS NOW BECOME MORE WIDELY ESTABLISHED IN ISLAMIC SOCIETIES IN THE MIDDLE EAST AND AFRICA THAN AT ANYTIME SINCE THE END OF THE COLONIAL ERA. HE ATTRIBUTES THIS TO THREE FACTORS: ITS ADAPTIBILITY AND RESILIENCE TO THE PRESSURES OF "MODERNITY"; ITS APPROPRIATENESS TO THE WAY MUSLIMS LIVE; AND ITS ABILITY TO BRING INTO BALANCE MUSLIM ETHICAL AND LEGAL PRINCIPLES.

SHARIA'S APPEAL IN NIGERIA

18. IN A SEPARATE CONVERSATION, GRAND KHADI ALIYU ALSO SPOKE OF THE APPROPRIATENESS OF SHARIA TO THE MUSLIM WAY OF LIFE IN NORTHERN NIGERIA. CONTRARY TO WESTERN PORTRAYALS WHICH, HE SAID, EMPHASIZE SUCH SEVERE FEATURES OF THE CODE AS PUNISHMENT BY AMPUTATION, MOST MUSLIMS CONSIDER SHARIA TO BE A HUMANE AND EFFECTIVE WAY OF RIGHTING WRONGS. IN PARTICULAR, HE SINGLED OUT THE ELEMENT OF PERSONAL INVOLVEMENT WHICH COMES FROM AN INDIVIDUAL'S ABILITY TO PRESENT HIS OWN CASE TO THE JUDGE. THOUGH ONE HAS THE CHOICE OF HIRING A LAWYER, THIS ABILITY TO "SAY ONE'S OWN PIECE," SAID ALIYU, GIVES THE ORDINARY MUSLIM A GREATER SENSE OF RECEIVING A FAIR HEARING THAN IN A WESTERN COURT IN WHICH HIGHLY TECHNICAL--AND OFTEN INCOMPREHENSIBLE--BRIEFS ARE DEBATED BY ATTORNEYS.

19. SHEIK GUMI, WHO AT ONE TIME WAS APPOINTED GRAND KHADI, DECLARED THAT SHARIA ALSO HAS THE ADVANTAGE OF EFFICIENCY: SAVE FOR LAND DISPUTES, WHICH, HE SAID, CAN DRAG ON FOR YEARS, MOST CASES CAN BE RESOLVED IN A FRACTION OF THE TIME REQUIRED BY WESTERN COURTS. IN ADDITION, HE SAID, SHARIA GIVES GREATER SCOPE FOR MUTUAL ACCOMMODATION BETWEEN THE CONTENDING PARTIES: IN A MURDER CASE, FOR EXAMPLE, THE VICTIM'S FAMILY HAS THE OPTION OF DEMANDING COMPENSATION INSTEAD OF THE DEATH PENALTY. AS FOR AMPUTATION, HE SAID, THE PUNISHMENT HAS A DEMONSTRATED EFFECT IN CURBING CRIME: DISPLAYING THE SEVERED HAND OF A THIEF IN THE MARKET PLACE, HE CLAIMED, IS A SURE WAY OF DETERRING OTHERS FROM THEFT.

SHARIA IN ACTION

10. NORTHERNERS PROVIDED VARIOUS EXAMPLES OF THE OPERATION OF THE SHARIA COURT SYSTEM WHICH, THEY CLAIMED, EXEMPLIFIED BOTH ITS POSITIVE ATTRIBUTES AS A LEGAL SYSTEM AND THE REGARD WHICH THE PEOPLE HAVE FOR IT. ONE TOLD OF A LAND CASE--ACCORDING TO GRAND KHADI ALIYU, BY FAR THE MOST NUMEROUS AND COMPLICATED CASES ON HIS DOCKET--IN WHICH A FAMILY PATRIARCH GRANTED USE OF A PIECE OF LAND TO A DISPLACED FRIEND FROM ANOTHER VILLAGE, SAYING THAT THE MAN WAS "LIKE MY OWN BROTHER." WHEN THE PATRIARCH'S SONS SOUGHT TO REPOSSESS THE LAND AFTER THEIR FATHER'S DEATH, THE FRIEND'S HEIRS CLAIMED

THAT THE ALLUSION TO "BROTHER" INDICATED INTENT TO CEDE THE LAND PERMANENTLY. THE JUDGE RULED, HOWEVER, THAT THE LAND HAD BEEN GRANTED FOR USE IN TIME OF NEED, WHICH WAS NO LONGER THE FAMILY'S CASE, AND SO MUST BE RETURNED TO THE DESCENDENTS OF THE ORIGINAL OWNER. MOREOVER, THE JUDGE REQUIRED THAT COMPENSATION ALSO BE PAID, NOT BECAUSE OF THE PROLONGED USE OF THE LAND, BUT BECAUSE THEIR ACTIONS CONTRADICTED THE SPIRIT OF FRATERNAL AFFECTION WHICH THE PATRIARCH HAD ALWAYS SHOWN THEIR KINFOLK. IN SUCH INSTANCES, OUR INTERLOCUTORS INSISTED, A SHARIA COURT COULD REACH A DECISION, WITHIN THE ETHICAL CONTEXT UNDERSTOOD BY ALL PARTIES INVOLVED, THAT WAS BOTH EQUITABLE AND FAIR.

¶11. ASKED FOR AN EXAMPLE OF PROBLEMS COMMON TO SHARIA COURTS, ONE INTERLOCUTOR SMILED AND RELATED A STORY WHICH HE SAID ILLUSTRATED THE SYSTEM'S "HUMAN IMPERFECTIONS." AGAINST HER FAMILY'S ADVICE, HE SAID, A WOMAN MARRIED A MAN WHO HAD A DIFFICULT PERSONALITY. INITIALLY THINGS WENT WELL AND THE MAN INSTALLED HER IN A NEWLY-BUILT HOUSE. WHEN RELATIONS DETERIORATED, HOWEVER, HE TRIED TO REPOSSESS THE HOUSE, BUT WAS TAKEN TO COURT BY THE WOMAN WHO CLAIMED THAT HE HAD PREVIOUSLY RELINQUISHED OWNERSHIP TO HER. UNABLE TO RESOLVE THE CASE IN ONE DAY, THE JUDGE ORDERED THE WOMAN TO RETURN THE NEXT DAY TO SWEAR TO THE TRUTH OF HER STORY ON THE QURAN. THAT EVENING, WISHING TO FIND A WAY TO SETTLE MATTERS AMICABLY, HER FAMILY APPROACHED THE JUDGE AND FOR A "CONSIDERATION" OF ONE HUNDRED NAIRA OBTAINED HIS CONSENT TO PLACE NEWSPAPERS IN THE BINDINGS IN WHICH THE QURAN IS CUSTOMARILY WRAPPED. THE NEXT DAY, THE WOMAN DULY--AND UNWITTINGLY--SWORE ON THE WRAPPED NEWSPAPERS, WITH THE RESULT THAT EVERYONE WAS SATISFIED: THE WOMAN BECAUSE SHE COULD KEEP THE HOUSE; THE MAN BECAUSE HE WAS CONVINCED THAT HER PERJURY ON THE HOLY BOOK WOULD BRING DIVINE RETRIBUTION UPON HER; THE FAMILY BECAUSE THEY GUARANTEED THAT THE WOMAN HAD NOT FORESWORN HERSELF; AND THE JUDGE BECAUSE HE WAS ONE HUNDRED NAIRA RICHER.

COMMENT

¶12. STORIES LIKE THE ONE ABOVE--WHICH IN FACT SOUND RATHER LIKE FABLES--ARE UNLIKELY TO PERSUADE THE UNCONVINCED OF THE EFFICACY OF THE SHARIA COURTS. NEVERTHELESS, THEY ARE SYMPTOMATIC OF THE DEPTH OF COMMITMENT WHICH THE SYSTEM IS CAPABLE OF EVOKING IN THE NORTH. IMPLICIT IN THEIR ANALYSES AND ANECDOTES IS THE BELIEF THAT SHARIA IS INTRINSIC TO ISLAMIC LIFE IN NORTHERN NIGERIA--A PATTERN OF LIFE WHICH THEY HOLD TO BE AS LEGITIMATE AS ANY OTHER AND WHICH THEY WISH TO SEE EVOLVE ACCORDING TO THEIR OWN PRECEPTS, NOT THOSE OF OUTSIDERS.

¶13. THEIR VIEWS ARE ALL THE MORE STRONGLY HELD BECAUSE NORTHERN MUSLIMS SEE THEIR WAY OF LIFE AS UNDER THREAT. IN CONTRAST TO THE ALLEGATIONS OF SOUTHERNERS THAT THE NORTH IS INTENT ON THE "ISLAMICIZATION" OF NIGERIA, NORTHERN MUSLIMS FEEL THAT IT IS THEY AND THEIR BELIEFS THAT ARE UNDER ATTACK, NOT SIMPLY FROM CHRISTIANS, BUT FROM THE PRESSURE OF A MODERN, WESTERN MATERIALISM WHOSE VALUES ARE INIMICAL TO THEIR OWN. WHILE THEY SEEM UNSURE AS TO HOW TO ACCOMMODATE CHANGE WITHIN THAT VALUE SYSTEM, THEY CLEARLY-INTEND TO DEFEND THOSE VALUES WITH ALL MEANS AT THEIR DISPOSAL.

¶14. THE DILEMMA WHICH THE COUNTRY AS A WHOLE THUS FACES IS HOW TO RECONCILE SUCH FERVENT CONVICTIONS WITH THOSE HELD WITH EQUAL ARDOR BY CHRISTIANS--WHO, AS ZAHRADEEN RIGHTLY STATES, SUPPORT SUCH CONCEPTS AS CHURCH-STATE SEPARATION AS STRONGLY AS MUSLIMS ABJURE IT. ASKED HOW HE WOULD RESOLVE SUCH OPPOSED VIEWPOINTS, ZAHRADEEN PROPOSED A COMPROMISE, BASED ON ESTABLISHING TWO PARALLEL COURT SYSTEMS: IN THIS WAY, HE CLAIMED, EVERY NIGERIAN CITIZEN COULD CHOOSE THE SYSTEM HE PREFERRED. CHRISTIANS, HOWEVER, ARE LIKELY TO SEE THIS LESS AS A COMPROMISE THAN AS AN ATTEMPT TO EXTEND SHARIA'S

JURISDICTION, SO AS TO ENCOMPASS CHRISTIAN POPULATIONS UNDER ITS AUTHORITY. (FYI: PRESENTED WITH THIS INTERPRETATION, ZAHRADEEN CONCEDED THAT SOME CHRISTIANS MIGHT INDEED SEE HIS PROPOSAL SO; POLOFF HAD THE IMPRESSION THAT HE ESPOUSED IT LESS FROM CONVICTION THAN AS A BARGAINING CHIP WITH SOUTHERNERS. END FYI.)

¶15. SHARIA THUS SEEMS TO HAVE ENTERED AN EMOTIONAL AND SYMBOLIC DIMENSION THAT TRANSCENDS THE LEGAL IMPLICATIONS, AND EVEN THE POLITICAL PARAMETERS, OF THE DEBATE ITSELF. THOUGH INDIVIDUALS ON EACH SIDE APPEAR TO TAKE A HARDLINE IN AN EFFORT TO SECURE A BETTER BARGAINING POSITION, NEITHER CAMP REALLY FEELS THAT IT CAN CONCEDE ON THE ISSUE WITHOUT DOING INJURY TO ITS FUNDAMENTAL INTERESTS OR SUFFERING A MAJOR LOSS OF FACE. EACH SIDE CAN SEE REASON IN ITS OWN CASE, BUT ONLY MALEVOLENCE IN THAT OF THE OPPOSITION. GIVEN THE PRESENT EMOTIONAL IMPASSE, IT REMAINS TO BE SEEN WHETHER THE MILITARY AUTHORITIES CAN REACH A DECISION ON INCLUDING--OR NOT INCLUDING--SHARIA IN THE CONSTITUTION OF THE THIRD REPUBLIC WHICH CAN LOWER THE PASSIONS WHICH THIS ISSUE HAS AROUSED. END COMMENT.

LYMAN